

OEM hired Janitor Service from maintenance companies on a contractual basis.

File Separate Decisions
(Personal Services)

OGC HAS REVIEWED.

Held: The objection to contracting with a firm or a third party for personal services (is based) xx on the fact that such contracts delegate to the contractor the right to select persons to render services for the Government which would be contrary to (5USC .43 - employment of employees to assist in executive departments). Also, the services rendered by the contractors employees would not be subject to direct supervision such as is generally exercised over Federal employees. 6 CG 474; 13 CG 351; 15 CG 951; 17 CG 300; 21 CG 388.

21 CG 388,391 holds that where a contract to get statistics from a firm was merely an "incident or by product" of the procurement of the information, and where the act setting up the procedure for collecting an "auto stamp tax" was very broad, such a contract would be permissible

17 CG 300,301: The general rule is that purely personal services may not be engaged by the Government on a non-personal service contract basis but are required to be performed by Federal personnel, under Government supervision. The fees or amount of the contract price paid in accordance with the terms of a nonpersonal service contract on the result to be accomplished rather than on the time actually worked on the job, covering, not only the contractor's time, but also the use of his facilities x x does not constitute salary.

(Business Machine Case)

15 CG 951,953 "The insufficiency of the present personnel in a Government establishment x x does not authorize contracting with a private agency for the performance of duties with which the Government agency is otherwise charged.

granted absolute and final authority to overrule the actions of persons regularly appointed or employed by the Government x x.

"x x any procedure by which the final determination in such matters could be controlled by the actions of two persons who are not responsible to the Government is unauthorized.

(Real estate broker)

3CG 720,721: "The matter of negotiating for the purchase of land for the U. S. is an administrative duty which may not be delegated to anyone other than a responsible officer of the Government" accord 4CG 356, 356.

6 CG 324: Services of draftsmen and consulting architects:

"The services contemplated under the contract are personal services x x and they may not be engaged by contract."

6 CG 820,821: The duty of making topographic maps is imposed by law on the geographical, survey, and contracting with an outside agency or individual to perform the duty thus imposed is not authorized."

15 CG 305,306 (desired to hire a firm of architects - no expert Government personnel available - no personnel available who could be hired by the Government and at the same time who were qualified for the necessary work) Held - in allowing a contract for such services:

"It is well established that in the absence of statute specifically providing otherwise, consultants or other expert personal services may be engaged by direct employment, only, and not by contract with a firm, corporation, or association to furnish the services of such persons as it may select."

(The CG then goes on to say that an exception may be made where:

- a. No such persons available in Government employ.
- b. Such services cannot be obtained in accordance with civil service rules and regulations.
- c. Consent for the contracting of such services has been obtained from the Civil Service Commission.
- d. That the services will not be contracted for at rates which exceed those specified in the classification Act.)

"The employment of outside professional services under contract should be resorted to only when, due to the highly technical features of the project or for other reasons, the use of regular employees of the Government would not be adequate to accomplish the purpose authorized by law." 14 CG 909, 911.

"If the services of particular architects are administratively determined to be necessary to the success of the contemplated project, the selection of the particular architects should be made by responsible officials of your administration and the services of such architects to the extent necessary should be secured either by employment or by contracting directly with the individuals and not through an intermediate agency. id.

The section in the U.S. Code which prohibits the employment of any employee in any executive bureau unless there is authorization for such employment and the payment therefor in the law granting the appropriations is 5 U.S. Code 46. This section also limits the rate of compensation for any such employee to the rates established by 5 USC Chapter 15 (Classification of Civilian Positions).

21 CG 400: Allows the Dept. of Justice to contract with a private agency for punching and sorting certain statistical cards. 15 CG 951 (International Business Machine Case) distinguished by reference to the respective appropriation language of the two agencies. It was held that the Justice Dept. appro. language was less specific as to its own obligations. An analysis of the two cases, and the

13:351 in allowing the employment of architects by contract the C. G. stated:

"The employment of outside professional services under a contract such as is proposed in the present matter should be resorted to only when, due to the highly technical features of the project or for other reasons, the use of regular employees of the Government would not be adequate to accomplish the purpose authorized by law."

NB: (Janitors, towel service) 6CG 474: "xx the work to be performed was not to be done by the contractor personally, but by employees selected by it. In other words, the duty of selecting employees qualified to perform personal services for the United States was transferred to the contractor instead of being performed by proper administrative officers. The delegation of administrative duties to others by contract ~~to others by contract~~ is not authorized. 6 CG 51; Underwood v U.S. Court of Claims June 14, 1926."

NB NB

6 CG 51: Contract with Dr. William Campbell of Columbia Ohio for services as an advisory metallurgist at \$200 per month:

"The contracting with an individual or firm to perform a duty or exercise an authority imposed or conferred by law on a Government department is not, authorized. See in this connection Underwood v. U.S. Ct. of Cl. June 14, 1926."

NB: 6 CG 140,142: Whether power to hire board of professional tea inspectors: "xx The inspection of tea is strictly a personal service. Personal services necessary in connection with Government activities are for performance by regular employees of the Government who are responsible to the Government, and such services should not be performed by contractors who cannot be held personally responsible for failure or misfeasance in the performance of such duties. The board of tea inspectors as constituted in the case here under consideration presents the anomalous situation of two persons, not Government employees and not under Government supervision, being

respective appropriation's language shows the distinction to be purely factitious.

16 CG 1055, 1056: "Inspection of construction work for the Government is a personal service and is not to be regarded so inherently a part of the construction as to render a purely construction appropriation available for payment of the inspectors salary, x x x The duties of the inspector being presumed to protect the interests of the Government are for performance by the regular personnel of the particular department concerned x x under proper supervision, and the salary constitutes a proper charge against the appropriation, available for salaries."

Miscellaneous:

Contracts for the employment of accountants expressly prohibited by 5 US Code 55:

"x x No part of any money appropriated in any act shall be used for compensation or payment of expenses of accountants or other experts x x unless authority for employment of such services or payment of such expenses is stated in specific terms in the act making provision therefor xx." See 1 CG 93; 14 CG 617.